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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 2 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of the)
Application of)

WT Docket No. 95-11

HERBERT L. SCHOENBOHM)
Kingshill, Virgin Islands)

For Amateur Station)
and Operator Licenses)

DOCKET FILE COPY ORIGINAL

To: The Commission

**BUREAU'S OPPOSITION TO APPLICANT'S MOTION FOR LEAVE TO
FURTHER SUPPLEMENT EXCEPTIONS**

The Chief, Wireless Telecommunications Bureau (Bureau), respectfully submits, by her attorneys, the following opposition to the applicant's "Motion For Leave To Further Supplement Exceptions":

1. The applicant, Herbert L. Schoenbohm, has moved for leave to "further supplement" his exceptions, filed on February 23, 1996, by furnishing a copy of a notice of appeal¹ filed with the United States Court of Appeals for the Third Circuit on April 28, 1995. The applicant claims that this document, if considered, would corroborate his testimony that an appeal of his criminal conviction² was then pending (Schoenbohm Exhibit 1, page 1). He claims corroboration is necessary at this time because the Bureau pointed out in its Proposed Findings of Fact and

¹ Two pages from a document entitled "United States Opposition to Acquittal" were apparently attached to the notice of appeal by mistake.

²This proceeding is based, in part, on the applicant's conviction for violating 18 U.S.C. § 1029(a)(1) (fraudulent use of counterfeit access device). See the Bureau's Proposed Findings of Fact and Conclusions of Law, Paragraphs 4 and 5, for the details concerning the applicant's conviction.

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See Eve Ackerman, 8 FCC Rcd 4205 (1993) and Short Broadcasting Co., Inc., et al, 8 FCC Rcd 5574 (Rev. Bd. 1993). The applicant has not shown that he meets either condition:

(a) The document the applicant proposes to offer indicates that, on April 28, 1995, the applicant filed a Notice of Appeal with the United States Court of Appeals for the Third Circuit in a case designated as United States of America v. Herbert L. Schoenbohm, Criminal No. 91-108. It does not show that the applicant was appealing the criminal case on which this proceeding is based. Therefore, the document does not corroborate the applicant's testimony.

(b) Even if the document the applicant proposes to offer did corroborate his testimony in some way, the applicant would still need to show that such evidence would affect the outcome of this proceeding. He has not done so.

(c) If there was an appeal of the conviction on which this case is based pending at the time of the applicant's testimony, the applicant could, through the exercise of due diligence, have discovered documentary corroboration.

See Eve Ackerman, 8 FCC Rcd 4205 (1993) and Short Broadcasting Co., Inc., et al, 8 FCC Rcd 5574 (Rev. Bd. 1993). The applicant has not shown that he meets either condition:

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(b) Even if the document the applicant proposes to offer did corroborate his testimony in some way, the applicant would still need to show that such evidence would affect the outcome of this proceeding. He has not done so.

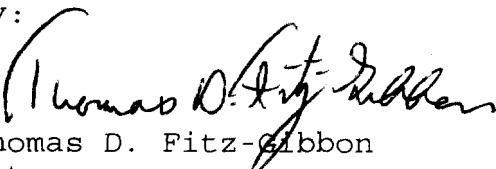
(c) If there was an appeal of the conviction on which this case is based pending at the time of the applicant's testimony, the applicant could, through the exercise of due diligence, have discovered documentary corroboration.


4. For the foregoing reasons, the applicant's "Motion For Leave To Supplement Exceptions" should be denied.

Respectfully Submitted,

Michele C. Farquhar
Chief, Wireless Telecommunications Bureau

By:


Thomas D. Fitz-Gibbon
Attorney


Terrence E. Reideler
Attorney

Dated: May 2, 1996

Certificate of Service

I, Rosalind Bailey, certify that, on May 2, 1996, copies of the foregoing Bureau's Opposition to Applicant's Motion for Leave to Further Supplement Exceptions, filed on behalf of the Chief, Wireless Telecommunications Bureau, were sent by First Class Mail to:

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P.O. Box 113
Frederick, Maryland 21705-0113

Rosalind Bailey